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KELLOGG, HUBER, HANSEN, TODD & EVANS, P.L.L.C.

1301 K STREET, N.W.
SUITE 1000 WEST
WASHINGTON, D.C. 20005-3317

(202) 326-7900

FACSIMILE
(202) 326-7999

MICHAEL K. KELLOGG
PETER W. HUBER
MARK C. HANSEN
K. CHRIS TODD
MARK L. EVANS
JEFFREY A. LAMKEN
AUSTIN C. SCHLICK

June 23, 1997

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JUN 23 1997

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

VIA HAND DELIVERY

Mr. William F. Caton
Acting Secretary
Office of the Secretary
Federal Communications Commission
1919 M Street, N.W.
Room 222
Washington, D.C. 20554

Re: **Expedited Reconsideration of Interpretation of Section 272(e)(4), CC Docket No. 96-149**

Dear Mr. Caton:

On June 20, 1997, I made an ex parte presentation over the telephone to James Casserly, legal advisor to Commissioner Ness, in response to questions raised by Mr. Casserly. The presentation was on behalf of the Bell Atlantic Telephone Companies, Bell Atlantic Communications, Inc., BellSouth Corporation, NYNEX Corporation, Pacific Bell, Nevada Bell, SBC Communications Inc., and Southwestern Bell Telephone Company.

In accordance with 47 C.F.R. § 1.1206(b)(2), I enclose for filing in this proceeding an original and one copy of a memorandum summarizing the substance of the presentation.

Sincerely,

Mark L. Evans
Counsel for Bell Companies

cc: James Casserly

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EXPEDITED RECONSIDERATION OF INTERPRETATION OF SECTION 272(e)(4)

CC Docket No. 96-149

Section 272(a) does not prohibit a Bell operating company from providing "[o]rigination of interLATA telecommunications services." Rather, it states that a Bell operating company may not provide such service "unless it provides that service through one or more affiliates" (emphasis added). The ordinary meaning of "through" is "in at one end, side, or surface and out at the other." Random House Webster's Collegiate Dictionary at 1391 (1995). As the word suggests, one way to provide origination of interLATA telecommunications services through an affiliate is to provide the underlying facilities or services to the affiliate so that the affiliate can then provide the services to others. Congress left no doubt that this was precisely its understanding. Section 272(e)(4) makes crystal clear that a Bell operating company may provide any interLATA facilities or services "to" its interLATA affiliate, so long as the same facilities and services are made available to other carriers at the same rates and on the same terms and conditions, and so long as the costs are appropriately allocated.

Sections 272(a) and 272(e)(4) are thus wholly compatible with each other. Section 272(a) establishes the general rule that a Bell operating company may provide origination of interLATA services "through" its affiliate. Section 272(e)(4) specifies the conditions under which the Bell operating company may do so by providing the underlying interLATA facilities and services "to" its interLATA affiliate.

The same analysis applies to a Bell operating company's provision of "[i]nterLATA information services" through an affiliate under section 272(a). InterLATA information services, no less than origination of interLATA telecommunications services, fall squarely within the scope of section 272(e)(4), which expressly permits a Bell operating company to "provide any interLATA or intraLATA facilities or services to its interLATA affiliate" (emphasis added).

Section 272(a)(2)(C) expressly excludes from the "interLATA information services" that a Bell operating company may provide through an affiliate "electronic publishing (as defined in section 274(h)) and alarm monitoring services (as defined in section 275(e))." The reason for those exclusions is made plain when one examines sections 274 and 275.

Section 274(a), in sharp contrast to section 272(a), flatly prohibits a Bell operating company from engaging in the provision of electronic publishing for a period of four years. While expressly permitting "a separated affiliate or electronic publishing joint venture" to engage in the provision of electronic publishing, section 274(a) does <u>not</u> allow a Bell operating company itself to provide electronic publishing <u>through</u> its affiliate or <u>to</u> its affiliate for provision to others. The contrast between sections 272(a) and 274(a) both highlights the importance of the precise terminology used in section 272(a) and forecloses an interpretation that would disregard the word "through" and would impute to section 272(a) a prohibition as absolute as that in section 274(a).

Section 275(a) likewise differs significantly from section 272(a) and goes a step further than section 274(a). Section 275(a) provides that "[n]o Bell operating company or any affiliate thereof shall engage in the provision of alarm monitoring services" for five years. It makes no exception for the provision of such services through or to an affiliate. Indeed, unlike section 274(a), it does not allow even a separate affiliate to engage in the provision of alarm monitoring services.

While each of these three separate provisions imposes an interim prohibition directed to Bell operating companies, each is written differently to achieve different legislative goals. In section 275, Congress prohibited a Bell operating company <u>and</u> any of its affiliates from engaging in the provision of alarm monitoring services. In section 274, Congress prohibited a Bell operating company, but not a "separated affiliate," from engaging in the provision of electronic publishing. And in section 272, Congress prohibited a Bell operating company from providing origination of interLATA telecommunications services and interLATA information services directly, but specifically permitted a Bell operating company to provide such services "through" an affiliate and "to" an affiliate on enumerated conditions. The Commission must honor these carefully crafted provisions by applying them scrupulously according to their precise and explicit terms.

* * * *

An original and one copy of this memorandum have been submitted to the Acting Secretary.